

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CALPINE CONSTRUCTION)
FINANCE COMPANY, L. P.)
(OSPREY ENERGY CENTER)) Case No. 00-1288EPP
POWER PLANT SITING)
APPLICATION NO. PA00-41,)
_____)

LAND USE RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, J. Lawrence Johnston, held a land use hearing in the above-styled case on January 23, 2001, in Auburndale, Florida.

APPEARANCES

For Petitioner Calpine Construction Finance Company, L.P.:

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For the Florida Department of Environmental Protection:

Scott A. Goorland, Esquire
Department of Environmental Protection
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STATEMENT OF THE ISSUE

Pursuant to Section 403.508(2), Florida Statutes, the sole issue for determination in this case is whether the site for the Petitioner's proposed electrical power plant "is consistent and in compliance with existing land use plans and zoning

ordinances." (All statutory references are to the 2000 codification of the Florida Statutes.)

PRELIMINARY STATEMENT

On March 20, 2000, Calpine Construction Finance Company, L.P. ("Calpine"), filed an application with the Florida Department of Environmental Protection ("Department" or "DEP") for authorization to construct and operate a nominal 527 megawatt ("MW") natural gas-fired, combined cycle electrical power plant on a site located in Auburndale, Florida. Calpine's application is subject to the requirements of the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518. In compliance with Section 403.508(1), a land use hearing ("the Land Use Hearing") was scheduled in this case for January 23, 2001.

On January 12, 2001, a "Prehearing Stipulation for Land Use Hearing" ("Prehearing Stipulation") was filed by Calpine, DEP, the Florida Department of Transportation, the Florida Department of Community Affairs, the Florida Public Service Commission, the Florida Fish and Wildlife Conservation Commission, the Southwest Florida Water Management District, the Central Florida Regional Planning Council, Polk County and the City of Auburndale (the "City"). In the Prehearing Stipulation, all of the signatories either agreed with, did not object to, or took no position regarding Calpine's assertion that the site of the proposed

project is consistent and in compliance with existing land use plans and zoning ordinances.

At the Land Use Hearing, Calpine called two witnesses: Robert Green (City Manager of the City of Auburndale) and Richard Zwolak (accepted as an expert regarding land use planning, land use compatibility analyses and environmental impact assessments). Calpine introduced Exhibits 1-6 and 8-25 into evidence without objection.

At the Land Use Hearing, the Administrative Law Judge granted Calpine's request to take judicial notice of the following documents: City Ordinance No. 985, which annexes Calpine's site into the City; City Ordinance No. 999, which amends the City's comprehensive land use plan and designates Calpine's site as a "Business Park Center"; City Ordinance No. 1000, which changes the City's zoning classification for Calpine's site to "Light Industrial"; excerpts of the City's comprehensive land use plan, which was adopted as City Ordinance No. 752; and excerpts of the City's Land Development Regulations, which were adopted in City Ordinance No. 764. These documents were introduced into evidence at the Land Use Hearing.

No one contested the evidence presented by Calpine at the Land Use Hearing. None of the signatories to the Prehearing Stipulation participated at the Land Use Hearing, except Calpine

and DEP. Except for Calpine, the parties to this proceeding did not call any witnesses or proffer any exhibits. Although the public was given an opportunity to comment, no one from the public testified or proffered any exhibits at the Land Use Hearing.

The transcript of the Land Use Hearing was filed with the Division of Administrative Hearings on February 14, 2001, and the parties were allowed 10 days to submit proposed recommended orders. Calpine and DEP timely filed a joint proposed recommended order on February 19, 2001. No other party filed a proposed recommended order.

Based on all of the evidence of record, the following findings of fact are determined:

FINDINGS OF FACT

The Petitioner

1. Calpine intends to license, construct, own, and operate a new electrical power plant in the City of Auburndale, Florida. Calpine filed an application with DEP under the PPSA for the proposed electrical power plant, which is known as the Osprey Energy Center or the Osprey Project.

The Site for the Osprey Energy Center

2. The site ("Site") for the Osprey Energy Center is located within the municipal limits of the City of Auburndale,

which is in the north-central portion of Polk County, Florida. The Site is approximately 1.5 miles from downtown Auburndale.

3. The Site is approximately 19.5 acres in size. The Site currently consists of an abandoned orange grove, which is overgrown and neglected. The Site has excellent characteristics for its planned use because the Site contains no environmentally sensitive areas, surface water bodies, wetlands, floodplains, threatened or endangered species of plants or wildlife, or historic or archaeological resources.

4. Adjacent to the east side of the Site is the Auburndale Power Plant, a 150 MW natural gas and oil-fired cogeneration facility. The eastern boundary of the Site also is adjacent to Tampa Electric Company's Recker Substation. Derby Avenue (CR 544A, a two-lane, paved collector road) is adjacent to the north side of the Site. The City of Auburndale's Memorial Park Cemetery is adjacent to the west side of the Site. The southern boundary of the Site is adjacent to Recker Highway (SR 655, a two-lane, paved collector road). There are several commercial operations on the south side of Recker Highway, including a sand/cement plant, an automobile parts shop, and a storage center. Cutrale Citrus Juices USA, Inc. and Florida Distillers have large industrial facilities located east of the Site. The City of Auburndale's Allred wastewater treatment plant ("WWTP") also is located east of the Site.

5. Historically, the area surrounding the Site has been comprised of a mixture of residential, commercial, industrial, and utility uses. However, the general area surrounding the Site is now dominated by industrial and commercial land uses and this land use trend is becoming more homogeneous. Although there are some homes across Derby Avenue and Recker Highway from the Site, they already are impacted by existing development in the area. Polk County planners have recognized this trend in land development patterns and have designated the homes located north of the Site as areas for future development as Business Park Centers.

6. The Site has excellent characteristics for its planned use. The Site is adjacent to an existing electrical power plant that uses the same combined cycle generating technology as the Osprey Project. The Site also is located adjacent to an existing electrical substation. Thus, the proposed use of the Site is nearly identical to the closest adjacent land uses.

7. Potable water, reclaimed water, and wastewater services will be available at the Site from the City of Auburndale. The City's Allred WWTP is located near the Site. The Recker Substation is adjacent to the Site, so no new electrical transmission lines will need to be built.

Description of the Proposed Osprey Project

8. The Osprey Energy Center will involve the construction and operation of a combined cycle, natural gas-fired, electrical power plant. The Osprey Energy Center will generate approximately 527 (nominal) MW under annual average ambient conditions. The Project will include two combustion turbines, two heat recovery steam generators, a steam turbine, exhaust stacks, cooling towers, a treatment and storage system for process water, a treatment system and two retention basins for stormwater, an operations control center, transformers and related switching gear, and other ancillary structures and features.

Minimization of Project Impacts

9. The Osprey Project will utilize highly efficient, state-of-the-art design concepts and equipment for the production of electrical power. Every aspect of the construction and operation of the Project has been designed to ensure compliance with all of the applicable land use regulations and to minimize impacts on nearby land uses.

10. Many of the major components of the Project will be located inside an environmental enclosure. The two combustion turbines, the steam turbine, certain water treatment equipment, and some maintenance and operations facilities will be inside a fully-enclosed area. The environmental enclosure will help

minimize the impacts of the Project on the surrounding area by reducing ambient sound levels, reducing the amount of contact stormwater generated on the Site, and improving Site aesthetics.

11. In compliance with the City of Auburndale's landscape regulations, Calpine has prepared and will implement a landscape plan for the Site. The landscape plan will utilize long leaf pine, shumard oak, bald cypress and live oak trees to provide significant visual screening of the Project from adjacent roads and surrounding areas. The landscape plan will include shrubs and ground cover to supplement the proposed arrangement of trees.

12. The Osprey Project will use only natural gas to produce electricity. Natural gas is the cleanest-burning fossil fuel available to generate electricity. A natural gas pipeline will be developed independently and brought to the Site, thus supplementing the natural gas pipelines that are presently available to the Auburndale Power Plant and other nearby industry and businesses.

13. The Osprey Project will not discharge any industrial or domestic wastewater to any surface water or groundwater. Instead, all of the wastewater from the power plant will be discharged to the City's nearby Allred WWTP for treatment. Treated effluent (reuse water) from the City's Allred WWTP will

be pumped to the Osprey Energy Center for reuse. By using treated effluent, the Project will reduce its use of groundwater.

Compatibility With Other Land Uses

14. Because the Osprey Project will use combustion turbines and combined cycle technology to generate electricity, the Project will be more compatible with less intense types of adjacent land uses than a traditional power plant would be. The Project will be more compatible with other land uses because: (a) the Project's footprint is much smaller than older plants and the entire facility will occupy much less land; (b) the structures used to generate steam and electricity are much smaller and less bulky than older facilities; (c) the Project's stacks are much smaller than the stacks used at older facilities; (d) the smaller size of the Project allows for the use of an environmental enclosure to minimize sound and other impacts; and (e) the Project is more highly automated than older facilities, thus requiring fewer employees and, as a result, minimizing highway traffic impacts.

15. There are approximately two dozen electrical power plants presently using combustion turbines in combined cycle configuration in Florida. Combustion turbines in combined cycle configuration are currently operated: (a) on the University of Florida's campus, approximately 800 feet from Shands Hospital;

(b) in Walt Disney World, approximately 1400 feet from Cinderella's Castle in the Magic Kingdom; (c) in Lake Worth, Florida, next to the local high school and within 1/4 mile of downtown Lake Worth; (d) in Umatilla, Florida, between a citrus processing plant and a residential neighborhood; and (e) at the Auburndale Power Plant, immediately adjacent to the Site. These existing facilities demonstrate that a combined cycle power plant can be compatible with less intensive land uses.

Existing Land Use Plans and Zoning Ordinances

16. The City of Auburndale fully supports and welcomes the construction of the Project. The City annexed the Site, amended its comprehensive land use plan ("Comprehensive Plan"), and rezoned the Site for the express purpose of allowing the Project to be developed.

17. On February 7, 2000, the City Commission adopted Ordinance No. 995, which annexed the Site into the City from Polk County. The City annexed the Site so that the City could better control the Site's development.

18. On July 10, 2000, the City Commission adopted Ordinance 999, which amended the future land use designation of the Site under the City's Comprehensive Plan and future land use map to "Business Park Centers." On August 28, 2000, the Florida Department of Community Affairs found the City's designation of

the Site for Business Park Centers to be "in compliance" with the requirements of Chapter 163, Part II, Florida Statutes.

19. The City designated the Site for Business Park Centers because, prior to annexation, the Site and the adjacent Auburndale Power Plant were designated "Business Park Center" under Polk County's comprehensive land use plan. The City's Comprehensive Plan provides that the City will utilize future land use classifications that are similar to and consistent with the land use designations used by Polk County. Consequently, after the City annexed the Site, the City designated the Site in a manner that was consistent with the County's prior designation. Further, the City's designation of the Site as Business Park Centers is consistent with the County's designation of Business Park Center for the lands located north and east of the Site. For all of these reasons, the Business Park Centers designation for the Site under the City's Comprehensive Plan is appropriate.

20. Under the City's Comprehensive Plan, the Business Park Centers designation authorizes light assembly plants as well as warehousing. The activities conducted at the proposed Osprey Energy Center will be consistent and compatible with these types of land uses. Indeed, the existing Auburndale Power Plant operates in a Business Park Center under Polk County's comprehensive land use plan, thus demonstrating that activities

like the ones proposed for the Osprey Project are compatible with the City's Business Park Centers designation.

21. The City has adopted land development regulations ("LDRs") that implement the City's Comprehensive Plan. The City's LDRs include zoning regulations applicable to this case. On July 10, 2000, the City Commission adopted Ordinance 1000, which changed the zoning classification for the Site to "Light Industrial."

22. The City's Light Industrial zoning classification permits light manufacturing, processing, fabricating, storage and warehousing, wholesaling and distribution facilities. The impacts and intensity of land uses associated with the Osprey Project will be comparable to the impacts associated with light manufacturing or processing facilities. Indeed, the Auburndale Power Plant is zoned Light Industrial by Polk County. In contrast to the Light Industrial zoning classification, the City has a Heavy Industrial zoning classification, which allows such uses as chemical plants, pulp and paper mills, and steel mills. A combined cycle, natural gas-fired power plant is smaller and has fewer adverse impacts than the types of uses included in the Heavy Industrial classification. For these reasons, the City's Light Industrial zoning classification is appropriate for the Osprey Project.

23. The City's LDRs allow "essential services" to be located in any zoning category if the project is reviewed and approved by the City Commission, and the project is not otherwise prohibited in the applicable zoning category. The City's definition of "essential services" expressly includes both "structures and uses" for electric facilities.

24. If the City's LDRs are applied to this case, it is clear that the Osprey Energy Center will provide essential electrical services. The Auburndale City Commission approved the annexation, future land use designation and zoning classification for the Osprey Project. Electrical power plants are not one of the uses prohibited in the City's Light Industrial zoning category. Thus, the Osprey Project is an allowed and appropriate use in the City's Business Park Centers land use classification and in the City's Light Industrial zoning district as an "essential service."

25. In early 2000, the City of Auburndale's LDRs included rigorous noise standards that would have been difficult to achieve at the Site for sounds in the high octave ranges. Indeed, the existing ambient noise levels at the Site were not in compliance with the City's noise regulations. Accordingly, on or about March 31, 2000, a petition for a variance from the City's noise regulations was filed with the City's Board of Adjustment. On April 19, 2000, the City's Board of Adjustment

granted a variance for the Osprey Project. The City subsequently repealed its noise standards and replaced them with the Standard Southern Building Code, which the Project can meet. Consequently, a variance for sound is no longer required.

Consistency With Land Use Plans and Zoning Ordinances

26. The Site is consistent and in compliance with the City of Auburndale's comprehensive land use plan. The Site is consistent and in compliance with the City of Auburndale's LDRs and the applicable zoning classification. Indeed, the City amended its Comprehensive Plan and rezoned the Site specifically to ensure that the Osprey Project would have the appropriate land use designations.

27. The Site is consistent and in compliance with the Central Florida Regional Planning Council's Regional Plan. The Site also is consistent and in compliance with the State Comprehensive Plan.

28. In the Prehearing Stipulation, the City of Auburndale, Polk County, the Florida Department of Community Affairs, the Central Florida Regional Planning Council, the Florida Department of Environmental Protection, the Florida Department of Transportation, the Florida Public Service Commission, the Florida Fish and Wildlife Conservation Commission and the Southwest Florida Water Management District either agreed with, did not object to, or took no position concerning Calpine's

assertion that the Site is consistent and in compliance with existing land use plans and zoning ordinances.

Public Notice of the Land Use Hearing

29. On April 12, 2000, Calpine published a "Notice of Filing of Application for Electrical Power Plant Site Certification" in The Ledger, which is a newspaper of general circulation published in Lakeland, Florida.

30. On April 21, 2000, the Department published a "Notice of Receipt of Application for Power Plant Certification" in the Florida Administrative Weekly.

31. On September 28, 2000, the Administrative Law Judge issued an "Order Granting Continuance and Re-Scheduling Hearing" and served a copy of this Order on all of the parties to this proceeding. The Judge's Order stated that the Land Use Hearing would be conducted on January 23, 2001.

32. On November 29, 2000, Calpine published a "Notice of Land Use and Zoning Hearing on Proposed Power Plant Facility" in The Ledger.

33. On December 8, 2000, the Department published notice of the Land Use Hearing in the Florida Administrative Weekly.

34. The public notices for the Land Use Hearing satisfy the informational and other requirements set forth in Section 403.5115 and Rules 62-17.280 and 62-17.281(4), Florida Administrative Code.

35. No party to this proceeding or member of the public has alleged that the public notices for the Land Use Hearing were not timely or sufficient.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 403.508.

37. Calpine and DEP published timely public notice of the Land Use Hearing, in compliance with the requirements contained in the PPSA and Florida Administrative Code Rules Chapter 62-17.

38. Pursuant to Section 403.508(2), the sole issue for determination in this proceeding is whether the Site of the Osprey Energy Center is consistent and in compliance with existing land use plans and zoning ordinances.

39. The competent, substantial, and uncontroverted evidence presented by Calpine at the Land Use Hearing demonstrates that the Site for the Osprey Project is consistent and in compliance with the applicable provisions of the existing land use plans and zoning ordinances, including but not limited to the City of Auburndale's comprehensive land use plan, future land use map, LDRs and zoning classifications, and the regional and state comprehensive land use plans.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Land Use Final Order in this case finding that the Site of the Osprey Energy Center is consistent and in compliance with the existing land use plans and zoning ordinances.

DONE AND ORDERED this 28th day of February, 2001, in Tallahassee, Leon County, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.